



POLICE DEPARTMENT

June 14, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Ron Dendy
Tax Registry No. 932544
47 Precinct
Disciplinary Case No. 86108/10

The above-named member of the Department appeared before me on February 18, 2011, charged with the following:

1. Said Police Officer Ron Dendy, assigned to the 47th Precinct, while on duty, on or about September 14, 2008, at about 1245 hours, in the vicinity of 859 East 230th Street, Bronx County, did abuse his authority as a member of the New York City Police Department in that he issued a summons for Disorderly Conduct to Kenneth Ralph, without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – ABUSE OF AUTHORITY

2. Said Police Officer Ron Dendy, assigned to the 47th Precinct, while on duty, on or about September 14, 2008, in the vicinity of East 230th Street, Bronx County, did fail and neglect to make entries in his Activity Log (PD 112-145) regarding his encounter with Kenneth Ralph, as required.

P.G. 212-08, Pages 1-2 – MAINTENANCE OF PROPER ACTIVITY LOGS

The Department was represented by Mary Lynne Frey, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through his counsel, entered a plea of Guilty to one of the subject charges and a plea of Not Guilty to the remaining charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Guilty of Specification No 1 The Respondent, having pleaded Guilty, is found Guilty of Specification No 2

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on September 14, 2008, the Respondent was on duty in uniform, assigned to the 47 Precinct, performing patrol duties in a marked Radio Motor Patrol car (RMP) with his partner Police Officer Robert Bell. At about 1245 hours, the Respondent and Bell responded to a house at 859 East 230 Street, the Bronx, after they received a radio transmission that a report had been made to 911 that a female was being assaulted by a male inside the house. When the Respondent and his partner arrived outside 859 East 230 Street, the Respondent encountered Kenneth Ralph who was there to meet his girlfriend Natalie Williams. Williams was inside 859 East 230 Street and Ralph was waiting for her in front of the house.

It is further undisputed that at the conclusion of the Respondent's encounter with Ralph, the Respondent issued a "C" summons to Ralph charging him with Disorderly Conduct [Department's Exhibit (DX) 2], and that Ralph subsequently filed a complaint against the Respondent with the Civilian Complaint Review Board (CCRB).

The Department's Case

The Department called CCRB Investigator Sonja Rucnov as its only witness.

Sonja Rucnov

Rucnov, who has been employed by CCRB as an investigator for almost two years, testified that Ralph's complaint against the Respondent was initially assigned to CCRB Investigator Sara Hyde and the case was reassigned to Rucnov when Hyde was promoted in May, 2009 to a higher position within CCRB. Hyde resigned from her position with CCRB in the Fall of 2010. When Ralph's complaint against the Respondent was reassigned to Rucnov, her "job was to close the case."

Rucnov testified that Hyde had conducted a tape-recorded interview of Ralph on September 28, 2008. Rucnov was not present at this interview. Rucnov testified that she has listened to the tape recording of Hyde's interview of Ralph several times, that she recognized Hyde's voice on the recording, and that Hyde followed CCRB procedures in identifying on the tape recording who she was interviewing. Rucnov testified that identification was provided by Ralph because CCRB procedures required that Ralph display a photo ID to establish that he was who he said he was.

Rucnov testified that the original tape recording of Hyde's interview of Ralph was retained in CCRB's file and that a copy of the tape recording was provided to the Department Advocate's office which had a transcript of the tape recording prepared. The transcript of Hyde's tape-recorded interview of Ralph on September 28, 2008, was admitted into evidence (DX 1).¹

On cross-examination, Rucnov confirmed that Hyde obtained and reviewed the SPRINT report which showed that a female caller had reported that she was being

¹ The Assistant Department Advocate stated that Ralph, who was served with a subpoena, had expressed hesitation about coming in to testify at this trial only because of his work schedule. He expressed difficulty with being able to take off uncompensated time from work because he needed to work.

assaulted by a male but the final disposition of this 911 call was that there was no physical altercation, only a verbal domestic dispute. Rucnov testified that she personally conducted a criminal history check regarding Ralph which showed that in 1994 Ralph pleaded guilty to criminal possession of a weapon and received a sentence of five years probation. Rucnov confirmed that before this investigation was closed, Ralph was offered the opportunity to mediate this matter but that he rejected mediation.

The Department offered in evidence a copy of the Respondent's Activity Log entries for September 14, 2008, (DX 3) [These entries show that the Respondent made no Activity Log entry that he had issued a 'C' summons to Ralph charging him with Disorderly Conduct]

The Respondent's Case

The Respondent testified in his own behalf

The Respondent

The Respondent, who is an eight-year member of the service and has been assigned to the 47 Precinct for about five years, recalled that he and Bell rushed to 859 East 230 Street arriving four minutes after they had received the radio transmission. They were not the first officers on the scene. He saw about three police vehicles double parked in the street and he saw officers running into a house. This did not surprise him because an assault in progress is a 'high priority' radio call. He and Bell got out of their RMP and proceeded to run towards the private house. He observed Ralph, who he had

never seen before, standing in the front entrance of the private house about three to four feet from the front door of the house

The Respondent secured the front of the house to make sure nobody ran out the front and he watched about seven officers run inside the house. He did not run into the house himself because he anticipated that the perpetrator might have already run out of the house or "was going to run out or also if EMS needed to respond he ' wanted to make sure the area was clear" so that EMS could quickly enter the house

The Respondent testified that he interviewed Ralph and asked him why he was standing there in the front entrance. Ralph said that he was waiting for someone. The Respondent testified that he "asked him can he please walk down the block ". He issued this instruction because Ralph "was standing in the front entrance" and the Respondent did not "want anything to happen to him in case somebody ran out or other units needed to respond. I didn't want him to be standing in the front door ". The Respondent ordered Ralph to leave that area by telling him, 'Can you please go down the block. It's not that far to the corner. Can you please just walk down the block, for my safety and your safety can you please walk down the block ". Ralph 'proceeded to curse me out by telling him ' go fuck off. He was just rambling on "

The Respondent testified that he had no recollection that Ralph had told him that he was there to see his girlfriend or he was calling her on the phone. He told Ralph several times' that he had to leave the front area where he was standing. Ralph never complied with this order. Ralph told him, ' It s a free country' and that he could "stand anywhere he fucking pleases ". The Respondent asked him for his ID but he did not put his hands on Ralph or handcuff him or pat him down. Ralph handed him his ID

Since 'at this time the officers happened to be walking by the house out of the private house,' the Respondent "just walked back to my car with his ID and I wrote the summons' charging Ralph with "Disorderly Conduct' for failing "to obey' a 'lawful order' issued to Ralph "to disperse there " He handed Ralph the summons Ralph was not under arrest at any point He had no further interaction with Ralph He neglected to make an entry in his Activity Log regarding his encounter with Ralph and the fact that he had issued a summons to Ralph charging him with Disorderly Conduct because ' it was a very busy day"

On cross-examination, the Respondent confirmed that Ralph was standing in the entranceway of the house, which had only one entrance about three feet in front of the door He was not running out of the house He was just standing there watching police officers run into the house " He was alone The Respondent was asked, "And there weren't any other people around besides Mr Ralph was there? He answered, "No, there was no one else around " He agreed that his entire interaction with Ralph lasted only a few minutes The Respondent was asked, "During that time there weren't any other people around, correct?" He answered, 'No, not at all " He denied that he had threatened to arrest Ralph Ralph's girlfriend exited the house after the Respondent was in possession of Ralph's ID which he had because I gave him a lawful order several times and he refused to move so I took his ID He gave me his ID "

The Respondent confirmed that he issued the summons for Disorderly Conduct to Ralph because of his "failure to obey a lawful order " The Respondent confirmed that on the summons he wrote that Ralph had violated Penal Law section 240.20, subsection 6 which covers failing to comply with an order to disperse

Ralph did not tell him that he wanted to wait for his girlfriend because she was on her way downstairs. Ralph only told him that he was waiting for a friend. The officers inside the house never called to him to assist them. He explained to Ralph "the concerns that he gave me and I was worried about his safety" and that "there were circumstances that lead to him getting a summons," and that he was being issued a summons because "I asked him several times to just walk down the block." He told Ralph, "Sir, I asked you several times to move down the block. You failed to comply with a lawful order you continue to curse at me. This is not the reason I am writing you a summons. It's not because you cursed at me but because you failed to obey a lawful order" to move. He agreed that Ralph was not congregating with anyone and that no one was affected by the fact that Ralph did not move at the moment the Respondent wanted him to move.

FINDINGS AND ANALYSIS

Specification No. 1

It is charged that while on duty, on September 14, 2008, at about 1245 hours, in the vicinity of 859 East 230 Street, the Bronx, the Respondent abused his authority by issuing a summons for Disorderly Conduct to Ralph without sufficient legal authority.

I find the Respondent Guilty based solely on his own testimony.

The Respondent issued Ralph a summons (DX 2) charging him with "Disorderly Conduct - Disobey a lawful order." The summons cites subdivision "6" of Penal Law Section 240.20. The Respondent testified that he charged Ralph with Disorderly Conduct for failing to obey a lawful order he issued to Ralph "to disperse there."

The wording of Penal Law Section 240.20(6) does not support the Respondent's position that he had sufficient legal authority to charge Ralph with this offense. To be found guilty of violating Penal Law Section 240.20(6), a person must either intend to cause public inconvenience, annoyance or alarm, or recklessly create a risk thereof by congregating with other persons in a public place and refusing to comply with a lawful order of the police to disperse. On cross-examination, the Respondent confirmed that Ralph was alone that he was not congregating with anyone and that (other than the Respondent's partner) there were no other people around during their brief, verbal interaction.

Since the Respondent did not assert during his testimony that Ralph had caused any public inconvenience, annoyance or alarm, or that Ralph had congregated with any other persons, the Respondent did not have sufficient legal authority to charge Ralph with having violated Penal Law Section 240.20(6).

The Respondent is found Guilty of Specification No. 1.

Specification No. 2

It is charged that while on duty, on September 14, 2008, at about 1245 hours, in the vicinity of 859 East 230 Street, the Bronx, the Respondent failed and neglected to make entries in his Activity Log (PD 112-145) regarding his encounter with Ralph.

The Respondent admitted that he had failed and neglected to make any entries in his Activity Log regarding his encounter with Ralph or regarding the fact that he had issued a summons to Ralph charging him with Disorderly Conduct. The Respondent's explanation that "it was a very busy day" does not excuse or even mitigate his failure to

make any entries in his Activity Log regarding the police action he took as a result of his encounter with Ralph

The Respondent, having pleaded Guilty, is found Guilty of Specification No 2

PENALTY

In order to determine an appropriate penalty, the Respondent's service record was examined See *Matter of Pell v Board of Education*, 34 N Y 2d 222 (1974)

The Respondent was appointed on July 1, 2003 Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum

The Assistant Department Advocate recommended that the Respondent be required to forfeit 15 vacation days as a penalty Having examined the facts and circumstances surrounding the Respondent's misconduct and the Respondent's prior disciplinary record, I recommend that the Respondent forfeit 15 vacation days

Respectfully submitted,



Robert W Vinal
Assistant Deputy Commissioner - Trials

APPROVED
OCT 17 2011

RAYMOND W KELLY
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

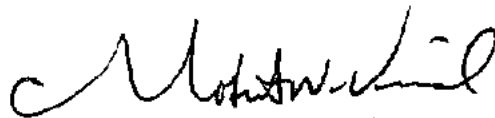
From Assistant Deputy Commissioner - Trials
To Police Commissioner
Subject CONFIDENTIAL MEMORANDUM
POLICE OFFICER RON DENDY
TAX REGISTRY NO 932544
DISCIPLINARY CASE NO 86108/10

The Respondent received an overall rating of 3.0 on his 2010 performance evaluation, 3.0 on his 2009 evaluation, and 3.0 on his 2008 evaluation. He has no medals [REDACTED]

He has a prior formal disciplinary record. In 2007, he forfeited 35 vacation days as a penalty to cover two separate sets of Charges and Specifications. In Disciplinary Case No. 81999/06, he was pleaded guilty to wrongfully removing his firearm from his holster while yelling and screaming at a person and requiring a person to produce ID without authority to do so. In Disciplinary Case No. 82258/06, he pleaded guilty to failing to properly check license plate information and making false entries in the FINEST log.

On February 6, 2007, he was placed in Level II Discipline Monitoring, based on his overall record. This monitoring was completed on May 4, 2010.

For your consideration



Robert W. Vinal
Assistant Deputy Commissioner – Trials